



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

FIRST APPEAL NO. 354 OF 2024

Executive Engineer,
Kumbharkinhni Dam Division, Pusad,
Tahsil Pusad, District Yavatmal.

.... **APPELLANT**

// VERSUS //

1) Gunwant Pandurang Borchate,
Age : Major, Occu.- Agriculturist,
R/o. Kumbharkinhni,
Tahsil Darwha, District Yavatmal.

2) State of Maharashtra,
Through its Collector, Yavatmal,
Tahsil and District Yavatmal.

3) Special Land Acquisition Officer,
Kumbharkinhni Project,
Tahsil Darwha, District Yavatmal.

.... **RESPONDENTS**

WITH

CROSS OBJECTION NO. 54 OF 2024

Gunwant Pandurang Borchate,
Age : 74 years, Occu.- Agriculturist,
R/o. Kumbharkinhni,
Tahsil Darwha, District Yavatmal.

.... **CROSS-OBJECTOR**

// VERSUS //

1) The State of Maharashtra,
Through its Collector, Yavatmal,
Tahsil Pusad, District Yavatmal.

2) The Special Land Acquisition Officer,
Kumbharkinhni Project, Darwha,
Tahsil Darwha, District Yavatmal.

- 3) The Executive Engineer,
Kumbharkinhni Dam Division, Pusad,
Tahsil Pusad, District Yavatmal.

.... **RESPONDENTS**

Mrs. I. P. Khisti, Advocate for Appellant in FA No.354/2024 and Respondent No.3 in Cross-Objection No.54/2024.

Mr. M. A. Kadu, Assistant Government Pleader for Respondent Nos.2 and 3 in FA No.354/2024 & Respondent Nos.1 and 2 in Cross-Objection No.54/2024.

Mr. A. B. Nakshane, Advocate for Respondent No.1 in FA No.354/2024 & Cross-objector in Cross-Objection No.54/2024.

CORAM : SANJAY A. DESHMUKH, J.

DATE : 01.08.2024.

ORAL JUDGMENT.

1. This appeal is preferred against the judgment and award passed by Civil Judge, Senior Division, Darwha, District Yavatmal dated 10.01.2019 in Land Acquisition Case No.51/2008.

2. The reference Court partly allowed the reference with direction to pay enhanced compensation at the rate of Rs.240/- per sq. mtr. in respect of open plot and at the rate of Rs.1500/- per sq. mtr. for constructed area of the house to the claimant for acquired house No.190, plot area 202.61 sq. mtr. and construction area 135.66 sq. mtr. of village Kumbharkinhni, Tq. Darwha, District Yavatmal.

3. The learned Advocate for the appellant submitted that learned trial Court had committed an error of law in holding that the compensation granted by the Special Land Acquisition Officer is inadequate and enhanced the compensation, which is totally erroneous and prayed for quash and set aside the judgment and decree passed by the learned trial Court and allow the appeal.

4. To counter the first appeal, the respondent No.1 has filed Cross Objection No. 54 of 2024. The challenge under this cross objection is only about constructed area 135.66 sq. mtr. situated at village Kumbharkinhi, Taluka Darwha, District Yavatmal was acquired for public purpose under Kumbharkini project. Under the same project, other lands as well as constructed houses were acquired under the same notification and same purposes.

5. Learned Advocate for the cross objector pointed out the judgment in ***First Appeal No.364/2016 (Ganesh Pundlik Deeve Vs. Executive Engineer, Kumbharkinhi Dam Division Pusad, Tq. Pusad Distt. Yavatmal and others)*** dated 22nd February, 2021 wherein this Court after considering parity, enhanced the compensation regarding constructed structure of the same village at the rate of Rs.3200/- per sq. mtr. He, therefore, prayed to award the same rate to the cross-objector and allowed his cross objection.

6. Perused the impugned judgment and the judgment of this Court dated 22nd February, 2021 passed in First Appeal No.364/2016.

7. Heard learned Advocate for both sides.

8. The admitted facts are that house No.190 of village Kumbharkinh, Tahsil Darwha, District Yavatmal was acquired admeasuring 135.66 sq. mtr. constructed area by notification dated 03.12.1998 according to the award passed on 30.12.2000. By the award of Land Acquisition Officer, total amount of Rs.34,735/- was granted as compensation to the appellant for 135.66 sq. mtr. constructed area. The Reference Court granted Rs.1500/- per sq. mtr for construction. However, after appreciation of the evidence of the expert, this Court in the case of *Ganesh Pundlik Deeve* (cited supra) considered Rs.3,200/- per sq. mtr. rate for constructed area of same village. The cross-objector is also entitled for same rate of compensation. Considering this fact and applying the principle of parity, the appeal deserves to be dismissed and cross-objection deserves to be partly allowed. The impugned judgment and award of the Reference Court deserves to be partly set aside and modified.

9. The Appeal No.354 of 2024 is **dismissed** and Cross Objection No.54 of 2024 is **partly allowed** as under :

- (i) The cross-objector is entitled for compensation at the rate of **Rs.3,200/-** per sq. mtr. for the constructed area of 135.66 sq. mtr., to that extent impugned judgment and award deserves to be modified along with statutory benefits.
 - (ii) The respondent No.3 – The Executive Engineer, Kumbharkinhhi Dam Division, Pusad is directed to deposit the remaining amount as per above rate in this Court within six months.
 - (iii) After depositing the amount cross-objector is entitled to withdraw the same and no any further application or order is required for directions to the registry.
 - (iv) The registry is directed accordingly to pay that amount.
10. The appeal and cross-objection are **disposed of**.

(SANJAY A. DESHMUKH, J.)